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With this thought, we hereby present to you

REVAMP OF RESERVATION POLICY: LEGAL OPPORTUNITY OR AN UNDUE ADVANTAGE: – A CRITICAL AND COMPARATIVE STUDY

AUTHORED BY: KAMNA MALIK

One Year LL.M. Course

Constitutional Law

Renaissance University, Indore

School Of Law

ABBREVIATIONS



AA-	Affirmative Action
HC-	High Court
SC-	Supreme Court
AIR-	All India Reporter
Art.-	Article
CAD-	Constituent Assembly Debates
No.-	Number
ed.-	Edition
etc-	Etcetera
Approx.-	Approximate(ly)
G.O-	Government Order
i.e -	That is
id.	Idem
UK-	United Kingdom
US-	United States
ILI-	Indian Law Institute
Govt.-	Government
Ors.-	Others
SC/ST-	Scheduled Caste/ Scheduled Tribe
OBC-	Other Backward Classes
SEBC-	Socially and Educationally Backward Class

SCR-	Supreme Court Report
Sec.-	Section
SCC-	Supreme Court Cases
S.No.-	Serial No.
Viz.-	Namely
v/s-	Versus
w.e.f.-	With Effect From

TABLE OF CASES

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CHAPTER – I

ORIGIN AND EVOLUTION OF RESERVATION SYSTEM

1.1. INTRODUCTION:

“You cannot build anything on the foundation of CASTE. You cannot build up a NATION. You cannot build up a MORALITY.”

“Every man who repeats the dogma of mill that one country is not fit to rule another country must admit that one class is not fit to rule another class.”

- Dr. BR Ambedkar

In our country there are about 4000 castes and subcastes. Our country is extraordinary in terms of diversity be it religious, cultural or linguistic and one of the distinct and peculiar features of country is the caste-based system since Vedic period.

In the year 1882, William Hunter and Jyotirao Phule proposed the idea of a reservation policy in India. The Caste System and the Indian practise of untouchability were the driving forces behind the reservation.

Reservation in India dates back to 1902, when the Maharaja of Kolhapur implemented reservation in education for non-Brahmin and backward castes, long before independence. Since then, it's been the subject of heated political and legal debates.

In 1933, British Prime Minister Ramsay Macdonald announced the 'Communal Award,' which established the current reservation system in India.

Although the caste system varies by place, the top and bottom can be plainly distinguished. As

a result of this system, Caste's position in the hierarchy is a reflection of its social and economic power. Castes have their own unique rituals and traditions. The Varna System divides Hindu society into four groups or varnas based on caste.

Untouchability has been proclaimed unlawful under India's constitution, which envisions a casteless society. To achieve a casteless society, however, it was important to identify the groups that were socially, politically, and economically excluded as a result of caste discrimination. As a result, preferential treatment for the formerly oppressed castes and marginalised tribes was maintained after independence. Although the affirmative action policy dates from the early twentieth century, the reasons in favour of reservation are still valid today.

1.2. PRE INDEPENDENCE:

The British came to India as "traders and conquerors, not social reformers." The British profoundly affected our country's social system. Through education and public service, the British introduced new advancement. However, the Brahmins and other upper castes enjoyed the majority of the benefits. Following the rejection of a mahar child in a government-run school for fear of untouchability, Public Policy was established in 1856 to "allow admittance in educational institutions to all without any distinction of Caste, religion, or race." In 1872, the Caste Disability Act was passed as a result of this policy.

The East India Company lost control of India in 1857, and the British crown established authority. The British administration realised that the only way to strengthen their grip on the country was to give the locals more political representation. However, because the British exclusively saw Indians in terms of religion, any political representation they received was mostly in the shape of communal and group rights, rather than individual rights.

In Mysore, reservation was provided for backward classes in 1874. It had "reserved 20 percent of lower and middle level posts in the Police department for Brahmins and the remaining 80 percent for non- Brahmins, Muslims, and Indian Christians"¹

From 1918, the State of Mysore recognised all communities other than Brahmins as "Backward

¹ S.R Maheswari, "Reservation Policy in India : Theory and Practice" 43 Indian Journal Of Public Administration 663 7 (1997)

Classes," reserving seats in educational institutions and government services for them. The Modern Communal Quota System can be traced back to this point. In the princely state of Kolhapur, the backward classes were given 50% of the jobs in the public sector. Other than the Brahmins, all are defined as Backward Classes.

The Government Of India Act 1909, The Government Of India Act 1919, Poona Pact of 1932 were instrumental in providing political representation to Indians and these acts also sowed the seeds of Reservation in political arena.

Because the Scheduled Castes, or depressed classes as they were known at the time, were not politically organised, the Morley - Minto Reforms did not take them into account. However, by 1917, BR Ambedkar had organised the Depressed Classes and claimed political representation for them in 1919. The Montague-Chelmsford Report's proposals were to be considered by the South Borough Franchise Committee. Untouchables "had been treated like slaves for so long that they knew nothing else" and thus "can be represented by untouchables alone," Ambedkar wrote in his submission to the committee. Ambedkar felt that special representation for the poor would serve to alleviate social prejudice by bringing together people from different castes. "So long as each caste or a group remains isolated, its attitude remains fossilised. But the moment the several castes and groups begin to have contact and cooperation with one another, the resocialisation of the fossilised attitude is bound to be the result".²

Ambedkar persuaded the Franchise Committee of the importance of special representation for the oppressed classes. As a result, the Government of India Act 1919 preserved "a distinct electorate for religious organisations and established a nomination system of a few representatives from the poor classes." As a result, the depressed classes were recognised as a "distinct community."

According to the Government of India Act, one of the "14 non-official members selected by the Governor-General to the Central Legislative Assembly" must be from the lower classes. Similarly, "the downtrodden classes were represented by four candidates in the central provinces and one each in Bengal and the United Provinces" in the provincial assembly.

²Evidence before the Southborough Committee on Franchise, 1919, available at: https://archive.org/stream/14_Ambedkar_CompleteWorks/07.%20Evidence%20before%20the%20Southborough%20Committee_djvu.txt (Last visited on April 22, 2022)

The Simon Commission suggested that special representation for minority religions and the poor be maintained, but it was opposed to separate electorates. Congress brought together all of the national parties to draft a new constitution. A committee for drafting a new constitution was created during the third All Party Conference in Delhi in January 1928, led by Sri Motilal Nehru. The Nehru report of 1928 suggested proportional representation and language rights for minorities rather than special representation for minority religions and disadvantaged sections. Dr. B.R. Ambedkar opposed the Nehru report of 1928 and was vehement about the necessity for reserved seats or a separate electorate for the poor.

Following the rejection of the Simon Commission's report by the majority of India's political leaders, the British brought Indian leaders to a Round Table Conference in London to discuss additional political changes. In London, three Round Table Conferences were held. Because most of its leaders were imprisoned in connection with the Civil Disobedience Movement, the Congress delegates boycotted the "First Round Table Conference." The oppressed classes were represented by Dr. BR Ambedkar and BR Srinivasan. To the minority committee, Ambedkar presented a memorandum. "Adequate representation for the poor in the legislature, equal rights, and a seat in the cabinet," was demanded. Ambedkar also advocated for "adult suffrage and a separate electorate for the first 10 years following independence, followed by reserved seats with a combined electorate for the oppressed classes."

Gandhi opposed granting separate electorates for any group during The Second Round Table Conference (September 1931 - December 1931). Despite this, Gandhi "grudgingly conceded to separate electorates for Muslims, Christians, Sikhs, and Anglo Indians." Gandhi, on the other hand, was vehement about not awarding distinct electorates to the oppressed classes and promised to fast till death if they were given special representation.³ In the alternative, Gandhi proposed a constitutional guarantee of minority language, culture, and religion. He also suggested dual electorates, proportional representation of seats, and adult franchise. Ambedkar requested "quotas for depressed classes in the legislature, executive, and public services" during the Second Round Table Conference.

Gandhi went on a hunger strike against separate electorates for the depressed classes. Gandhi said "We do not want the untouchables to be classified as a separate class. The Sikhs may

³ Bhagwan Das , "Moments in History Of Reservations" Economic and Political Weekly 3832 (October 28, 2000)

remain such in perpetuity. So may the Muslims and so may Europeans. **Would the untouchables remain untouchables in perpetuity? I would far rather prefer that Hinduism died than untouchability lived**".⁴

The Congress leaders obtained an agreement with Ambedkar, and the Poona Pact was signed on September 24, 1932. In exchange for 151 reserved seats in provincial assemblies with combined electorates, Ambedkar dropped his demand for "78 distinct electorates." "18 percent of seats in the Central Legislature should be designated for the disadvantaged classes," according to the Poona Pact. "There must be no limitations attaching to anybody on the account of his being a member of the depressed classes in respect to any election to local bodies, or appointment to the public services," the Poona Pact said.⁵

As a consequence of the Poona Pact the government issued orders regarding reservation in services vide "resolution No F 14/17-B 33 dated July 4, 1934 (Gazette Of India, part I, July 7, 1934)" for minorities except the depressed classes. Because the administration believed that such a reservation would serve no practical purpose considering the nature of general education in the country, no posts were obtained for the impoverished classes. Ambedkar was nominated to the Viceroy's executive council, and he filed a memorandum asking "reservation in public offices, scholarships, and other benefits for the Depressed Classes." The viceroy agreed, and it was officially reported to the Secretary of State. For the first time in Indian history, 8.5 percent of seats in Central Services and other facilities were designated for Scheduled Castes in 1942. The reservation of seats for the poor was incorporated into the Government of India Act 1935. The Act introduced the phrase "Scheduled Castes" to replace the term "Depressed Classes." The Act defined Scheduled Castes as "such castes, races, or tribes, or parts of groups within castes, races, or tribes, as his Majesty in council may specify, being castes, races, tribes, or parts of groups which appear to his Majesty in council to correspond to the classes of persons formerly known as the Depressed Classes." The Government of India (Scheduled Castes) Order, 1936 later defined the list of "Scheduled Castes" across the country. The Government of India Act of 1935 also included a provision for communal reservation in public services.

⁴ Pattabhi Sittaramaihya, The History of the Congress 538 Vol I 538 (The Congress Working Committee, Allahabad, 18 1935) as cited in S.R Maheswari, " Reservation Policy in India : Theory and Practice" 43 Indian Journal Of Public Administration 664 (1997)

⁵ Supra note 3

The goal of such reservations was to accommodate various parts of India's minorities, particularly Muslims, and to strengthen their status.

1.3. Constituent Assembly Debates

The newly established constituent assembly was entrusted with creating a new constitution for India, with Dr. BR Ambedkar as head of the drafting committee. Nehru introduced a resolution on the 13th of December 1946, which marked the commencement of constitutional reservation for Scheduled Castes and minorities. The objective resolution contained 8 clauses.

According to Clause 6 of the Objective resolution "Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political, equality of status, of opportunities, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association, and action subject to law and public morality," clause 6 also stated "WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;"⁶

The Minorities Subcommittee was entrusted with making recommendations on minorities' representational guarantees. Dr. Ambedkar informed the committee on the historical cruelty meted out to the Scheduled Castes, as well as the many steps required to improve their socioeconomic conditions. He requested special consideration for the socioeconomic mobility of the poor. Before the Subcommittee, Ambedkar requested separate electorates for the depressed classes, while Anglo Indians demanded special seats in the railways, post, and telegraph. Although Muslim legislators wanted reservations in the legislature, there was less of a desire for reservations in the public sector. The Subcommittee identified the following issues for consideration based on the various demands presented to it:

- (1) Representation in legislature, joint versus separate electorates, and weightage;
- (2) Reservation of cabinet seats;
- (3) Reservation in services;
- (4) Administrative machinery to ensure protection of minority rights.

The Committee advocated reserved seats for Scheduled Castes and minorities based on population with a combined electorate, as well as reserved jobs in the public sector, but rejected

⁶ Constituent Assembly Debates on 13th December, 1946 available at: https://www.constitutionofindia.net/20constitution_assembly_debates/volume/1/1946-12-13 (last visited on April 26, 2022)

requests for reserved cabinet seats and a separate electorate.

The Report of the advisory committee was presented to the Constituent Assembly on August 27, 1947. Sardar Vallabhai Patel contended that “communal representation was a poison which has entered into the body politic of our country”⁷ and that reserved seats for Scheduled Castes and Minorities were required as a compromise option to help them adjust to the new electoral system. However, later in the assembly, Sardar Patel delivered a speech criticising the reservation system, saying, "Those representatives of the Scheduled Caste must know that the Scheduled Caste must be effaced entirely from our society, and if it is to be effaced, those who have ceased to be untouchables and sit among us must forget that they are untouchables, or else they will not be able to serve their community if they carry this inferiority complex." They will only be able to assist their community now that they are with us if they have a sense of belonging. They are no longer Scheduled Castes, and as a result, they must modify their demeanour, and I implore them to maintain good relations with the other Scheduled Castes. There are factions among them, but everyone strives in his or her own way. We'll start all over again immediately. So let us forget about these divisions and cross-sections and stand together as one."⁸

The drafting committee felt that the word "backward" should be inserted before the words "class of citizens" in draught Art.10(4) [now Art.16(4)], and the committee inserted that word in the Draft Constitution, despite the fact that it was not present in clause 10(4) as passed by the Constituent Assembly. "They will discover that the position of those who think and hold that there must be equality of opportunity has been incorporated in sub-clause (1) of Article 10," Dr. Ambedkar explained the Committee's action. It's a broad principle. At the same time, as I previously stated, we had to reconcile this formula with the demand of certain communities that the administration, which is currently controlled by one or a few communities for historical reasons, be abolished, and that others be given the opportunity to enter the public sector. If, for example, we were to grant in full the demands of those populations who have not been fully employed in the public sector, what would actually happen is that we would be entirely demolishing the first proposal on which we are all agreed, namely, that there shall be equal opportunity.

⁷ Constituent Assembly Debates on 27th August, 1947 available at : [https://www.constitutionofindia.net/ 21 constitution_assembly_debates/volume/5/1947-08-27](https://www.constitutionofindia.net/21/constitution_assembly_debates/volume/5/1947-08-27)(last visited on April 26 , 2022)

⁸ Constituent Assembly Debates on 28th August, 1947 available at :[https://www.constitutionofindia.net/ 22 constitution_assembly_debates/volume/5/1947-08-28](https://www.constitutionofindia.net/22/constitution_assembly_debates/volume/5/1947-08-28) (last visited on April 26 , 2022)

Let me give you an example. Assume, for example, that reservations were made for a community or a cluster of communities, the total of which came to around 70% of the total positions under the State, with just 30% remaining unreserved. Could anyone argue that reserving 30% as available to general competition would be sufficient in terms of implementing the first principle, namely, equality of opportunity? It can't be in my opinion. As a result, if the reservation is to be consistent with sub-clause (1) of Article 10, the seats to be reserved must be limited to a small number of seats. If honourable Members Understand the position that we must protect two things: the principle of equal opportunity and the demand of communities that have not had representation in the state thus far, and I am confident they will agree that unless you use a qualifier like backward, the exception made in favour of reservation will eventually eat up the rule entirely. There will be no trace of the rule. That, I believe, is the rationale for the Drafting Committee taking on the duty of inserting the term 'backward,' which, admittedly, did not originally find a place in the basic right in the form it was established by this Assembly.⁹

The Report of the advisory Committee was accepted with only minimal changes. The draft constitution was submitted to the president of constituent assembly on February 21, 1948. It contained the provisions regarding prohibition of discriminations the “grounds of religion, race, caste or sex and provided for reservation of posts in favour of any backward class of citizens who in the opinion of the state are not adequately represented in the services under the state”.¹⁰ However, following the division, members' attitudes regarding offering reservations to minority members shifted. In May 1949, a resolution was voted to end religious minority reservation. While religious minority quotas were abolished, it was agreed to give reservation for Scheduled Castes for a period of ten years. The Muslim members "were divided on the issue of special seats.

"According to Begam Aizaz Rasul, "reserve is a self-destructive weapon that constantly separates minorities from the majority." Tajamul Husein, on the other hand, declared that "the term minority is a British fabrication, and the British have gone, and the minorities have gone with them."¹¹

⁹ H.M Seervai, Constitutional Law Of India 551 (Law and Justice publishing Company, New Delhi,4th edition, 2021)

¹⁰ Arpana Bansal, Reservation under the Constitution Of India: A Critique (2011) (Unpublished Ph.D thesis, Punjab 28 University

¹¹ Francesca R. Jensenius, “Mired in Reservations: The Path-Dependent History Of Electoral Quotas in India” 74 The 10 Journal Of Asian Studies 90 (2015)

However, this decision was not without opposition. Mahavir Tyagi spoke for providing Class Based reservation than Caste Based Reservation. "The term Scheduled Castes is a fiction. Factually there is no such thing as 'Scheduled Castes'. There are some castes who are depressed, some castes who are poor, some who are untouchables, some who are down-trodden.....There are thousands of Brahmins and Kshatriyas who are worse off than these friends belonging to the scheduled castes. So by the name of Scheduled Caste, persons who are living a cheerful life, and a selected few of these castes get benefit. This is no real representation. No caste ever gets benefit out of this reservation..... Minorities must exist and must be provided for. There will be no peace so long as minorities are not provided for. I do not believe in the minorities on community basis, but minorities must exist on economic basis, on political basis and on an ideological basis and those minorities must have protection. In this sort of a wholesale decision, the minorities will get little representation. I would suggest that in the place of the Scheduled Caste, the landless labourers, the cobblers or those persons who do similar jobs and who do not get enough to live, should be given special reservations. By allowing caste representations, let us not re-inject the poisonous virus which the Britisher has introduced into our body politic. I would suggest Sir, that instead of the so called Scheduled Caste, minorities be protected, if you like, on class basis. I therefore, submit, Sir, that the Scheduled Castes should now go and in place of Scheduled Caste, the words Scheduled classes be substituted so that we may not inadvertently perpetuate the communal slur on our Parliaments".¹²

It should be emphasised that whereas reservations were first requested for SCs because they have "distinctively their own interests that others would not be able to represent," SCs were now granted reservations "on grounds of their economic, social, and educational backwardness." The reservation system was only in existence place for ten years. However, the regulations have been extended several times.

¹² Constituent Assembly Debates on 26th May, 1949 available at : https://www.constitutionofindia.net/30constitution_assembly_debates/volume/8/1949-05-26 (last visited on April 28 , 2022)

CHAPTER – II

LAW AND PROVISIONS WITH REGARDS TO RESERVATION

2.1. INTRODUCTION:

Equality asserts that all people are born free and equal. Equality assumes that all persons have equal rights and deserve equal respect. Everyone has the right to be treated equally. This implies that laws, policies, and programmes must not be discriminatory, and that public officials or government agencies must not administer or enforce laws, policies, and programmes in a discriminatory or arbitrary manner.

Every person has the right to equality under Article 14 to 18 of the Constitution. Equality has been given a prominent place in India's socio-political structure. The perceived disparities that India inherited from its history, particularly the caste system, motivated the draftsman to give equality principles a central place in the Constitution. Inequality refers to the conditions established by a few powerful persons who impacted government policy and exploited their position of power. Equality calls for the removal of all special privileges.

Non-discrimination is an essential component of the equality principle. It assures that no one's rights be denied on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, or birth. Discrimination on some additional grounds, in addition to those mentioned above, may also be illegal. Age, nationality, marital status, handicap, location of residency within a country, and sexual orientation are among the grounds. To attain equality, it may be essential to treat people differently at times. This is because individual variations might make it difficult for people to exercise their rights without assistance.

The principle of reservation was incorporated in the Constitution in order to bring the so-called disadvantaged classes on level with the so-called privileged ones. The Indian Constitution allows for positive discrimination in order to achieve equality of opportunity and standing in society. The founding fathers never meant Reservation to be a passing fad. Reservations for the poor were to be continued until they were socially and economically elevated. Reservations were put into the system to assist the disadvantaged classes in gaining a stronger footing and reaping the equitable advantages of an independent and free nation.

2.2. POST-INDEPENDENCE:

In 1950, the government declared its policy on hiring Scheduled Castes and Scheduled Tribes in government jobs. The policy maintained the 12.5 percent reservation for Scheduled Castes in public services when appointments were made through Direct Recruitment. The policy maintained the reservation for Anglo Indians to particular positions that they had as of August 15, 1947. The government made it clear that there will be no discrimination in promotion recruiting. The 1950 Constitution provides for reservations for SC and ST in legislative bodies." According to Article 335, "claims of Scheduled Castes and Scheduled Tribes to services and posts" In making appointments to services and posts in connection with the operations of the Union or of a State, the claims of members of the Scheduled Castes and Scheduled Tribes should be taken into account, consistent with the preservation of administrative efficiency."

In 1953, the First Backward Classes Commission was formed, with Sri Kaka Kalelkar as its chairman. The Commission was given the responsibility of "determining the criteria for recognising Socially and Educationally Backward Classes." In its 1955 report, the commission established the following criteria: "low social position in the traditional caste hierarchy"; "lack of general educational advancement among the major section of a caste or community"; "inadequate or no representation in government service"; and "inadequate representation in trade, commerce, and industry." For the purposes of the national government, the Kaka Kalelkar Commission categorised 2399 castes as "socially and educationally backward."

The Majority report proposed "reservations of 25% in Group A, 33.3% in Group B, and 40% in Groups C and D Public services." However, the chairman presented a supplementary report in which he condemned caste-based reservation. The government was also hesitant to establish caste as a cause of backwardness, therefore the Kaka Kalelkar Commission report was rejected. Other than the SC and STs, there were no new beneficiaries of reservation under the federal government.

In 1978, the Second Backward Classes Commission was established under the chairmanship of Sri BP Mandal. It found that the Backward Classes made up 52 percent of the country's population. "The report discovered that social backwardness is a result of caste position, which leads to a variety of different sorts of backwardness." Weighted indicators were developed to assess social and educational backwardness: four social indicators worth three points each, three educational indicators worth two points each, and four economic indicators worth one

point each."¹³

Article 338 provided for the "appointment of Special Officers" for SC and ST. The National Commission for Scheduled Castes and Scheduled Tribes was established in 1990 as a result of the Constitution's 65th Amendment Act. In 1990, the VP Singh government issued a memorandum allocating 27% of Central Government jobs to the Socially and Educationally Backward Classes. The memorandum was updated in 1991 by the PV Narasimha Rao administration, adding an extra 10% reservation for those economically backward sections not covered by the present reservation plan. This sparked widespread outrage, and it was challenged in the Supreme Court in *Indra Sawhney V. Union of India*¹⁴. "Economic criteria cannot be the primary foundation for Reservation," the Supreme Court said. The court agreed with the Mandal Commission's conclusion that "social backwardness leads to educational and economic backwardness."

As a result, the Supreme Court declared the 10% reserve for economically deprived districts irreconcilable with the constitution. According to the Commission, 27% of central government jobs should be earmarked for those from the backward classes. Since 1994, People belonging to backward classes or other Backward Classes were designated as the new beneficiaries of reservation. According to Article 340 of the constitution, "the formation of a committee to evaluate the situation of socially and educationally backward classes and to suggest measures for their progress."

The Constitution was revised for the 77th time in May 1995. Article 16 now has a new clause (4A). "Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State," according to the new clause. Article 16 (4A) was subsequently altered by the 85th amendment, which added the words "in issues of promotion, with consequential seniority, to any class."

In *S. Vinod Kumar V. Union of India*¹⁵, the Supreme Court reiterated its decision in *Indra Sawhney*, holding that conditions for promotions may not be lowered or repealed. In 2000, the

¹³ Malavika Prasad, "From the constituent assembly to the Indra Sawhney case, tracing the debate on economic 33 reservations", available at: <https://caravanmagazine.in/law/economic-reservations-constituent-assembly-debates> (last visited on May 2, 2022)

¹⁴ AIR 1993 SC 477

¹⁵ (1996) 6 SCC 580

Constitution was amended for the eighty-second time, adding a proviso to Article 335: "Provided that nothing in this article shall preclude the making of any provision in favour of members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State".

Equality is a fundamental element of the Indian Constitution. Article 14 assures everyone the right to equality. Article 15 reinforces Article 14 by prohibiting discrimination "on the basis of religion, race, caste, sex, place of birth, or any of them." Article 16 guarantees "equality of opportunity for everyone in areas connected to public employment."

Article 46 of the State Policy Directive Principles pledges the State to "support with special care the educational and economic interests of the weaker parts of the population, particularly the SC and ST, and their protection against social injustice and all types of exploitation." The Communal Government Order, which reserved seats in professional institutions on a communal basis, was set down by the Supreme Court in *State of Madras v. Champakam Dorairajan*¹⁶(1951) as a violation of the equality clause. This resulted in the "First Amendment to the Constitution in 1951," which added Section 4 to Article 15 and states: "Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

Following the decisions of TMA Pai, Islamic Academy, and PA Inamdar, the Constitution was changed for the ninetieth time to provide for reservations in private unaided colleges except for minority educational institutions. Article 15(5) provided that : "Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Article 30(1)."

Articles 243-d and 243-t were added to the constitution by the constitution 73rd Amendment Act 1992 and the constitution 74th Amendment Act 1992, respectively, making provisions "for

¹⁶ AIR 1951 SC 226

reservation of not less than one third of the total seats for women in the constitution of the Panchayats and Municipalities."

On January 12, 2019, the 103rd Constitutional Amendment established a reserve of "up to 10% in government positions and educational institutions for economically disadvantaged persons." The amendment excludes "those already covered by Articles 15(4) and (5) of the Constitution, as well as Article 16(4) of the Constitution—reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes."

The 126th Amendment Bill **substituted seventy years of reservations for the SC and ST community to 80 years**. Concerning the nomination of members of the Anglo-Indian community, it chose to maintain the status quo by substituting the words '70 years'

2.3. CONSTITUTIONAL PROVISIONS:

Every Constitution has philosophy of its own. The Preamble of our Constitution proclaims the resolution of PEOPLE OF INDIA to constitute India into a SOVEREIGN, SOCIALIST, SECULAR AND DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and opportunity; and to promote among them all ; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation. The ward 'social justice' in the Preamble implies recognition of greater good to a larger number without deprivation of legal rights of anybody.

The provisions of the Indian Constitution upon which orders related to reservations in services for Scheduled Castes (SCs), Scheduled Tribes (STs), and other Backward Classes (OBCs) have been issued by the Government of India's Department of Personnel & Training and Ministries of Social Justice. Articles 16, 335, 338, 340, 341 & 342 of the Constitution make provisions for reservation, and protection, in public employment for members of the SC/ST and other backward groups.

One of the goals and objectives of the Constitution is to provide equality of status and opportunity for all people, as well as to promote brotherhood among them all while ensuring the dignity of the person and the unity and integrity of the nation. It should be noted here that, because the right to equality and the prohibition of discrimination against any citizen on the basis of religion, race, caste, sex, or place of birth were insufficient to make the basic human

right meaningful to the weaker sections, the framers added additional provisions, Articles 41, 45, and 46 of the constitution, requiring positive state action and permitting reservations in admissions to educational institutions and in posts and appointments consistently.

Article 334 initially provided for the reservation of seats for the scheduled castes and the scheduled tribes in the House of the People and the legislative assemblies of the states for a period of ten years. However by the successive amendments in the constitution, this reservation has been extended for from time to time up to 2010 AD. Article 340 provides for the appointment of a commission to investigate the conditions of socially and educationally backward classes and to make recommendations as to the steps that should be taken to improve their conditions.¹⁷

All these provisions are aimed at speedy uplift of weaker sections in order to secure equality of status and of opportunity, which in turn will promote fraternity, unity and the integrity of the nation. In constituent assembly debate, Dr B.R. Ambedkar had underlined the need to promote social and economic equality in order to make democracy meaningful and workable.¹⁸

"Equality before the law and equal protection of the laws" is covered under Article 14. While the former assures that everyone has the same legal standing, the later notion strives to establish substantive Equality or Equality in Fact by categorising the advantaged and disadvantaged and giving Affirmative Action Programs to the disadvantaged. "It was the realisation that mere provision of formal Equality would not be sufficient to bring about desired Equality of status and opportunity that led to adopting these provisions". Thus, a Full Bench Of Kerala High Court observed : "It has however been realised that in a country like India where large sections of the people are backward socially, economically, educationally and politically, these declarations and guarantees will be meaningless unless provision is also made for the upliftment of such backward classes who are in no position to compete with the more advanced classes. Thus, to give meaning and content to the Equality guaranteed by Articles 14, 13, 16 and 29, provision has been made in Articles 15(4) and 16(4) enabling preferential treatment in favour of the weaker sections".¹⁹

¹⁷ Dr. Ashish Singhal, Eakramuddin, Jamshed Ansari, "A Study on the issues of reservation policies in India" 06 *International Research Journal of Engineering and Technology* 4254 (2019).

¹⁸ Constituent Assembly Debate, Vol. 11, pp. 979 and 980.

¹⁹ Hariharan Pillai V. State Of Kerala, AIR 1968 Ker 47

2.3.1. ARTICLE 14 – RIGHT TO EQUALITY

The principles of natural justice, reasonableness, fairness, non- arbitrariness, equity etc. are omni present in the constitution, and therefore these principles will be the essential part of Article 14.

Right to equality means the absence of legal discrimination against any one individual, group, class or race. The need to refrain from discriminating or eroding equality, as well as the obligation to safeguard and enhance the fulfilment and enjoyment of all people's rights to equality and non-discrimination, are both included in the right to equality and non-discrimination.

The terms (a) equality before the law and (b) equal protection under the law are not interchangeable. The former has a negative connotation, meaning that no special treatment is given to any group of people or person. It indicates that all people are treated equally in all situations. Again, "equality before the law" indicates that everyone is equal in the eyes of the law, and that everyone, from the most powerful to the most powerless, would be tried by the same law and receive the same punishment for the same offence.

The term “equal protection of the laws” has been borrowed from the 14th U. S. constitutional amendment. It means that like should be treated alike, that no one should be favoured and discriminated. This allows the Parliament to classify persons for the various purposes. The classification should be reasonable. While Article 14 prohibits class legislation, it does not prohibit the government from reasonably classifying individuals, objects, and transactions for the purpose of accomplishing certain purposes. However, categorization cannot be "arbitrary, contrived, or evasive." To be valid, a legislative classification must be reasonable. Two requirements must be met in order to pass the reasonable classification test –

1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group
2. The differentia must have a rational relation to the object sought to be achieved by the statute in question²⁰

²⁰ The test was clearly expressed by Das, J in *State of West Bengal v Anwar Ali Sarkar*, AIR 1952 SC 75 and has been repeated in many more cases. For its continuing assertion see *Motor General Traders v. State of A.P.*, (1984) 1 SCC 222, 229; *PrabodhVerma v. State of U.P.*, (1984) 4 SCC 251

2.3.2. Article 15:

Every citizen has a basic right under Article 15 (1), which requires the state "not to discriminate against any citizen solely on the basis of religion, race, caste, sex, place of birth, or any of them." If the state's activities are in violation of Art. 15 (1), they will be declared null and invalid under Article 13. Citizens have a remedy if their basic rights are violated under Articles 32 and 226 of the Constitution.

Article 15 (2) states that "no citizen shall be subject to any disability, liability, restriction, or condition with regard to access to shops, public restaurants, hotels, and places of public entertainment or the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of state on the basis of religion, race, caste, sex, place of birth, or any of them, on the basis of religion, race, caste, sex, place of birth, Clause (3) gives the government the authority to grant particular rights to women and children.

Article 15(3) enacts that "nothing in Art.15 shall prevent the state from making any special provision for women and children" The Constitution originally only permitted for preferential treatment in the areas of government employment and legislative representation. Although Article 16 prohibits discrimination in government employment, it also allows "the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, is not adequately represented in the services under the State." "The rights of members of the Scheduled Castes and Scheduled Tribes should be taken into consideration, consistent with the preservation of administrative efficiency, in the making of appointments to services and posts in connection with the business of the Union or a State," says Article 335. Article 16 (4) is specifically limited to government employment, but Article 15 (4) pertains to all of the State's dealings. The Supreme Court ruled in *General Manager V. Rangachari* ²¹ that Article 16(4) allows internal promotion as well. The term "posts" was interpreted in Art. 16(4) to include both initial appointments and promotions.

However, it was also said that preferential treatment under Art. 16 (4) does not apply to salary, increment, pension, or retirement age, and that the Doctrine of Equality protects the same. The dissenting justices in Rangachari held that "reservation was confined to ensuring enough Quantitative representation of the preferred group. At the same time, the majority believed that

²¹ AIR 1962 SC 36

reservation might be utilised to ensure representation in higher-ranking positions. As a result, the state might try to place members of favoured groups in positions of control when creating preferences in government service."²² "The public interest in the effectiveness of government services put limitations to reservation in promotions," the Court stated in *Balaji V. State of Mysore*²³. As a result, any "irrational, excessive, or extravagant reservation" would fall beyond the scope of Art. 16. (4). As a result, the Supreme Court said unequivocally in Balaji that courts would carefully examine the rationality of reservations. Following the decision in Balaji, the Court nullified the reservation in *Devadasan V. Union of India*²⁴ due to its excessive scope.

"Art.16 (4) authorised reservation of posts not only at the initial stage of appointment but also encompassed promotion to selection posts," the Supreme Court had decided in Rangachari.

Rangachari was overruled in *Indra Sawhney V. Union Of India*²⁵, which concluded that "Art. 16(4) was limited to initial appointments solely and did not support limitations in the area of promotion as such." The 77th Constitutional Amendment, however, inserted Clause (4A) to Art. 16, "permitting reservation in promotion to Scheduled Castes and Scheduled Tribes." "The unfilled reserved vacancies in a year are to be carried over to succeeding years and that these vacancies are to be recognised as distinct and independent from the present vacancies during any year," says Article 16 (4B) of the 81st Constitution Amendment.

The court in *Govt. of A.P. V. P.B. Vijayakumar*²⁶ nuanced article 15(3), stating that "reservation for women in state employment was likewise admissible under that clause, notwithstanding distinct provision in this respect under Article 16."

The Court decided that Article 15 (3) should be given the broadest feasible meaning in order to cover reservation in positions subject to the fifty percent criterion. Both article 15(3) and article 16(4), according to the Court, are aimed at creating social equality and should be understood in the same way. Article 15(4) has a broader reach, encompassing "all areas of government action not covered by a more explicit provision." The phrase "creating any exceptional provision" is clearly ambiguous in nature. Under this provision, the government can provide a wide range of services aimed at advancing the interests of socially and

²² Marc Galanter, *Competing Equalities, Law and The Backward Classes In India* 9 (University Of California Press, 3 United States Of America, 1st Edition ,1984)"

²³ AIR 1963 SC 649

²⁴ AIR 1964 SC 179

²⁵ AIR 1993 SC 477

²⁶ (1995) 4 SCC 520

educationally disadvantaged people. Unlike 16 (4), 15 (4) does not restrict state preferred action to reservations alone. The government can also use "price discounts, scholarships, special facilities (housing, medical), relaxation of age limits, special coaching, scholarships, grants, and loans" in addition to reservations. The Supreme Court declared in *Chaitram V. Sikander*²⁷ that "the area of protection authorised is not limited by the qualifiers socially and educationally that identify the groups that may be benefitted, but may extend to protection from economic exploitation."

In *Ashok Kumar Thakur v. Union of India*²⁸, the Supreme Court noted once more that "after an applicant graduates from a university, he is considered to be educationally ahead and is ineligible for special privileges under article 15(5) of the Constitution for post-graduate and any further courses thereafter." This is to balance the obligations of Articles 15, 16 on the one hand and Article 335 on the other."

Article 17 of the constitution declares "Untouchability is abolished and its practise in any form is outlawed.". The Abolition of Untouchability Act of 1955 strengthens the argument even further. Despite the fact that neither the constitution nor the Act of 1955 define the term "untouchability," it is expressly prohibited in any form. It is illegal to refuse admittance to public institutions such as schools and hospitals on the basis of untouchability.

2.4. One Hundred and Third Constitution Amendment Act:

There has been a worldwide outcry to end caste-based reservation and replace it with economic factors. Even before taking the court, U.S. Supreme Court Justices indicated support for economic factors for affirmative action.²⁹ There are two types of advocates of economic-based affirmative action over the globe.

1. Those who favour economic-based affirmative action above caste/race-based affirmative action. Reservation as a result of the current legal and political atmosphere.
2. Those who favour economic-based reservation because it directly addresses "responsibilities that have been arbitrarily put in the way of... individuals"³⁰

²⁷ AIR 1968 Pat. 337

²⁸ 2008 (6) SCC 1

²⁹ Antonin Scalia, *The Disease as Cure: "In Order to Get Beyond Racism, We Must First Take Account of Race,"* 1979 WASH. U. L.Q. 147, 156

³⁰ Richard H. Fallon Jr., "Affirmative Action Based on Economic Disadvantage," 43 UCLA L. REV. 1914 (1996).

The first argument in favour of economic-based quota does not hold water in a nation like India, where caste-based reservation is specifically provided for in the Constitution. However, it holds true under Affirmative Action in the United States, where the caveats are justified by reading the fourteenth amendment's equal protection provision. Furthermore, unlike in India, there is stronger judicial examination of race-based reservation in the United States, and popular support favours economic reservation.

Following are the objectives identified for providing for a ten per cent quota for Economically Weaker Sections.³¹

1. Inadequate representation of economically disadvantaged groups in higher education and public jobs due to budgetary constraints. "Unless they fulfil the precise conditions of social and educational backwardness, the advantages of current reservations under paragraphs (4) and (5) of Article 15 and clause (4) of Article 16 are typically inaccessible to them."
2. According to Article 46 of the Constitution, "the State should promote with special care the educational and economic interests of the weaker sections of the population, particularly the Scheduled Castes and Scheduled Tribes, and shall safeguard them from social injustice and all types of exploitation." Reservation is provided in the Constitution for "socially and educationally backward classes of citizens, the Scheduled Castes, and the Scheduled Tribes" in relation to admission to higher educational institutions, and reservation of appointments or posts is provided for backward classes of citizens. However, no reservations were made for economically disadvantaged groups; the 103rd amendment act attempts to correct this and therefore fulfil the mission of Article 46.

The 103rd Amendment Act to the Constitution added clause 6 to Articles 15 and 16. Article 15(6) authorises the "State to make any special provision for the advancement of any economically weaker sections of citizens, including matters relating to admission to educational institutions, including private educational institutions (aided and unaided), excluding minority educational institutions." Article 16(6) authorises the "State to make any

³¹ THE CONSTITUTION (ONE HUNDRED AND TWENTY-FOURTH AMENDMENT) BILL, 2019, available at [https://prsindia.org/files/bills_acts/bills_parliament/2019/Constitution%20\(124th%20Amendment\)%20Bill,%202019_0.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2019/Constitution%20(124th%20Amendment)%20Bill,%202019_0.pdf) (last accessed on May 30, 2022)

measure in favour of economically poorer groups of people for reservation of appointments or posts." Reservation under Articles 15(6) and 16(6) is in addition to current reservations, excluding the backward class of citizens, the socially and educationally backward class of citizens (creamy layer), Scheduled Castes, and Scheduled Tribes, and is capped at 10%.

According to "Office Memorandum no. 20013/01/2018-BC-II dated January 17, 2019³², of the Ministry of Social Justice and Empowerment, Government of India, only those whose families" meet the following criteria are eligible for Economic reservation: -

- "Annual gross revenue should be less than Rs. 8 lakhs" • "Agricultural land should be less than 5 acres"
- "Residential flat less than 1000 square feet"
- "Residential plots of less than 100 square yards in informed municipalities or less than 200 square yards in regions other than notified municipalities,"

The 1991 Office memorandum pursuant to the Mandal commission report is the only precedent to the provisions of the 103rd Constitutional amendment act providing for upper caste reservation.



WHITE BLACK
LEGAL.

³² Memorandum no. 20013/01/2018-BC-II dated January 17, 2019" available at : https://iimv.ac.in/images/139OM_on_EWS_of_MSJE.pdf (last visited on August 30, 2021)

CHAPTER - III

AFFIRMATIVE ACTIONS AND COMPARISON – CRITICAL ANALYSIS

3.1. INTRODUCTION:

Affirmative action “is not a conventional redistributive measure, in the sense that it does not lead to a redistribution of wealth or assets in the same way that, say a policy of land reforms, would achieve. It simply alters the composition of elite position in the society”³³

"Given systematic and multifaceted discrimination against certain groups, the normal process of development might not automatically close the gaps between marginalised and dominant groups because dominant groups will disproportionately corner the fruits of development," the goal of affirmative action is to "close the gaps between marginalised and dominant groups."

As a result, affirmative action laws and programmes address the challenges of "historically and socially impoverished portions of society." Access to education and employment for these groups is fostered through these programmes. Affirmative Action programmes seek to "redress the effects of unjust past and present discrimination." It is not intended to be a poverty-reduction or job-creation programme.

Affirmative action can also be defined as "public or private actions or programs, which provide or seek to provide opportunities or other benefits to persons on the basis of, among other things, their membership in a specified group or groups." ³⁴

According to **Professor David Benjamin Oppenheimer**, “the practice of affirmative action is comprised of five methods: quotas, preferences, self-studies, outreach and counselling, and anti-discrimination”.³⁵

Professor Oppenheimer “classifies these methods under hard and soft affirmative action, with the former consisting of quotas and preferences and the latter encompassing various outreach programmes, self-evaluations, marketing, and labour market developments”.³⁶

³³ Grey Elliot Minto, India, Minto and Morly, 1905-1910: compiled from the correspondence between Viceroy and the 11 Secretary of State 102 (Macmillan, London ,1934)

³⁴ A. P. Singh, “Affirmative Action Programme in India: The Road Ahead”, 1 J. INDIAN L. & Soc'y 153 (2009).

³⁵ Jed Rubenfeld, “Affirmative Action”, 107 Yale L.J. 427 (1997).

³⁶ *Ibid.*

3.2. COMPARISON:

Affirmative action programmes, notably reservation, were implemented in India and the United States to compensate for past wrongs done to certain groups as a result of caste and race discrimination, respectively. In contrast to India, affirmative action laws in the United States are race sensitive and have resulted in the growth of minorities and women. Some have even been withdrawn in response to accusations that they result in undue favouritism toward minorities and women. The affirmative action in USA essentially aims to achieve targeted goals and not provide blanket reservation to the specific quotas.³⁷

South Africa, like India, has a long and severe history of social inequality. While combating racial inequities is the primary goal of affirmative action in South Africa, some thought is also given to the necessity for affirmative action in favour of women.

In comparison to most other countries, Brazil saw more racial ambiguity and inequality. The Brazilian government ratified the United Nations Convention 111 in 1968, which demanded the advancement of racial and ethnic minorities in vocations. President Fernando Henrique Cardoso signed the National Program for Affirmative Action, which intended to diversify government agencies, in 2001, marking a significant step forward.

This was an unanticipated change that came without warning. Affirmative action had two goals in Brazil: to combat racial discrimination and to improve access to higher education for traditionally disadvantaged groups in order to level the playing field.

Despite widespread protest, the caste/race-based quota system of affirmative action in Brazil was upheld by the eleven-member Brazilian Supreme Court. This has resulted in a shift in Brazilian racial identification. Although affirmative action programmes in Brazil have been successful, much more has to be done in the larger context, as the main focus is on equal opportunity at universities.

Affirmative action quotas have long been abandoned in the United States. They've implemented a point system in which applicants from the Black community, underserved

³⁷ *Tomiko Brown-Nagin, Elites, Social Movements, and the Law: The Case of Affirmative Action, 105 Colum. L. Rev. (2005)*

regions, immigrants, and others are granted a few more points in the admissions and appointment processes. As a result, the cost of production rises nominally. The extra points only result in a minimal reduction in criteria. The quota system, on the other hand, might result in a significant decrease of standards. In South Africa, where the new constitution calls for affirmative action, the situation is similar.

The government's authority to make special provisions for the underprivileged was soon put to the test in **State of Madras v. Champakam Dorairajan**³⁸. The Communal G.O., which reserved places at 60 professional colleges, was overturned by the Supreme Court as a violation of Article 29(2) and Art. 15 of the Constitution (1). The Court rejected the claim that "by its inherent power, the directing principle of Art.46 constituted a principle of preference that may validly be reflected in legislation." The Court further noted that there was no exemption to Art. 16 (1) in the form of Art. 16(4) in the case of Art. 29. (2). It may well be that the intention of the Constitution was not to introduce at all communal considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds."

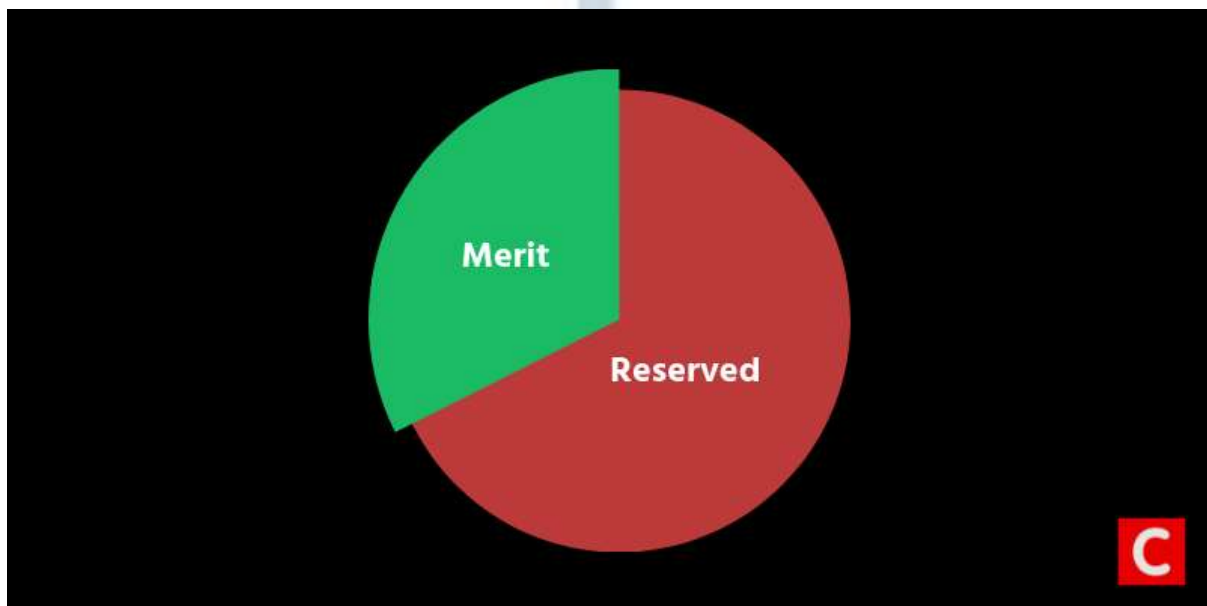
The scope of reserves has long been a source of contention. The extent of reservations is not specified in the Constitution. However, based on BR Ambedkar's statement in the Constituent Assembly and interpretation of laws allowing for preferential treatment as ensuring substantive equality, the courts have ruled that it should be limited to a minority of seats.

The court concluded in M.R Balaji that "a unique provision anticipated by Art.15(4), such as reserve of posts and appointments contemplated by Art.16(4), must be within reasonable limitations." The interests of the weaker sectors of society, which constitute a first charge on the states and the Centre, must be balanced against the interests of the entire community. Adjusting these opposing demands is definitely challenging, but if a State reserves virtually all available seats at all institutions under the pretext of providing a unique provision, then plainly would be undermining the intent of Art.15(4). Again, we are hesitant to declare definitively what would be an appropriate provision to make. A particular provision, in general and in a broad sense, should be less than 50%; how much less than 50% depends on the relevant existing conditions in each situation." By restricting reservations at 50%, the court established the norm that reservations should always be accessible to a minority of seats.

³⁸ AIR 1951 SC 266

The Supreme Court's landmark verdicts in **D.V. Baksh v. Union of India**³⁹ and **Air India v. Nargesh Mirza**⁴⁰ have proven that discrimination would never be allowed anywhere, and hence the judgments in both instances have set new milestones in the notion of equality. Reservation is a potent remedy for achieving equality, which is a condition of total fairness. Reservations have shown to be incredibly effective in many nations. For example, the United States has affirmative action for blacks, and reservation is playing a major role in closing the gap between different classes in many other countries.

PIE CHART – STATISTICAL GRAPH



Education has always been recognised as critical to the progress of SCs. The Indian government now authorises the reservation of 15% of seats in universities and colleges for SCs, in accordance with Article 15(4) of the Constitution, which enables the state to make specific measures for the educational development of SCs. Depending on the size of their SC populations, state governments have varied reservation rates. Along with these endeavours, the federal and state governments have established scholarship or stipend programmes, as well as initiatives to provide special tutoring, books, midday meals, stationery, and uniforms to SCs. One such programme, which is wholly supported by the federal government, gives four years of special and remedial tutoring to selected secondary school students in order to assist SCs in gaining entrance to college.

³⁹ (1993)3 SCC 662

⁴⁰ AIR 1981 SC 1829

Table: I

General Literacy Development of SC and All in General Category, India.

	India	
Year	SC	All in General
1961	10.27	28.3
1971	14.68	34.45
1981	21.38	42.17
1991	37.41	52.21
2001	54.69	65.38
2011	63.89	74.04

Sources: Census of India, data projected from 1961 to 2011

In 1988, the national literacy mission was established with the goal of developing functional literacy. It has aided in raising reading levels, which is reflected throughout the study area. According to the Indian Census, the scheduled caste population was 14.82 percent of the total population in 1971 and increased to 16.20 percent in 2001. The table above depicts the literacy development of the general public as well as "SC." In 1961, the overall literacy rate was 28.30 percent, whereas the Scheduled Caste literacy rate was just 10.27 percent, more than twice. The SC's literacy rate is growing at a far slower rate than the general population. Furthermore, according to the 2011 census, the SC literacy rate is 63.89 percent, while the general literacy rate is 74.4 percent, although the disparity between them has grown, from 7.03 percent in 1961 to 10.15 percent in 2011.

Table: II

Enrolment of SCs at Various Level of Higher Education, India, March,1992

Course	Boys	Percentage	Girls	Percentage	Total	Percentage
Ph.D/D.Sc/D.Phil	724	0.0001	208	0.28	932	0.28
Post-Graduation (MA+M.Sc.+M.Com.)	27,341	10.59	6494	8.87	33,835	10.20
Under-graduation	2,07,799	80.46	60,93	83.03	2,68,72	81.09

(General)						
Under-graduation (Engineering+ Medicine +Education)	22,371	8.66	5515	7.53	27,886	8.41
Total	2,58,235	100	73,10	100	3,31,35	100

Source: India, 1993, Selected Educational Statistics: 1991-92, MHRD, New Delhi.

Enrollment in numerous undergraduate and graduate courses in general, technical, medical, and other professional education is covered under the policy. Reservations might also include the allocation of dormitory spaces. Depending on the size of their SC populations, state governments have varied reservation rates. The enrolment of scheduled caste boys and girls in various higher educational institutions is shown in Table II. SC students enrolled in Undergraduate General Courses at a greater rate than students enrolled in other higher degree courses. They enrolled 81.09 percent of undergrads in general courses in 1992. However, it was quite low in terms of admission to higher education, with just 8.41 percent of engineering, medicine, and education students admitted, and 10.2 percent of MA, M.Sc., M.Com. students admitted, and only 0.28 percent of Ph.D, D.Sc., D.Phil. students admitted.

3.3. Employment of Scheduled Caste in Government Jobs:

Reservation quota in India for Government Jobs

Reservation Category	Reservation Quota (%)
ST	7.5
SC	15
OBC	27
EWS	10
Total	59.50%

Reservation quota in India for Government Jobs and Higher Educational Institutions

A vacancy reserved for SCs or STs or OBCs cannot be filled by a candidate other than an SC or ST or OBC candidate, as the case may be.

As seen from the above table, about **60% of seats are reserved in India** – for various sections like ST, SC, OBC, and EWS – with respect to Government jobs and Higher Education Institutions. 3% of seats are also reserved for differently-abled persons across all categories.

This also means that **only 40% of seats are available under merit**. In the merit seats, not only the general category candidates but all other categories like SC, ST, OBC, and EWS can also compete.

Under the provisions of the constitution, both the Central and State governments have implemented a number of plans and initiatives to better the social lives of SC, ST, and OBC people in order to get employment in All-Indian services. Not only were reserves adopted as a protection, but also pre-examination training centres for coaching were formed, which provided SC and ST applicants with "confidence building and interview tactics."⁴¹ Despite the fact that the government apparatus is aggressively focused toward achieving these goals, there has been no significant improvement in the situation, particularly in terms of performance and value change, even after six decades of independence. According to B.K. Roy Burman, "Even twenty five years after independence, the promotion of Scheduled caste in Class I, II, and III services are meager in spite of reservations"⁴² In fact in many public sectors organizations large numbers of reservation jobs remain unfilled due to their inability to get suitable SC/ST candidates even with the relaxed conditions.

Table-III

Percentage of SC Employees in Central Government Jobs

	Class	Class	Class	Class
year	I	II	III	IV
1959	1.18	2.38	6.95	17.24
1965	1.64	2.82	8.88	17.75
1974	3.2	4.6	10.3	18.6
1984	6.92	10.36	13.98	20.2

⁴¹ India 1975, Year Book, pp.98-107, see also in Kalar, S.K. „Performance of Scheduled Caste and Scheduled Tribe Aspirants for Executive Positions: A Study, <http://about.jstor.org/terms> (accessed on 27-05-2022)

⁴² Roy Burman, B.K. The Problem of Untouchables“ Seminar, 177, May 1974, pp.10-13.

1995	10.12	12.67	16.15	21.26

Sources: National Commission for SC/ST, Seventh Report, April 1984 - March 1985, 5; Commissioner for SC/ST, Sixteenth Report, 1966-1967, 15; National Commission for SC/ST, Fourth Report, 1996-1997 and 1997-1998, Volume I, p.14

The preceding table-II clearly illustrates that SC representation has increased in all four categories of employment in central services over time. For example, the proportion of SCs in Class I has grown tenfold, from 1.18 percent in 1959 to 10.12 percent in 1995. From 2.38 percent in 1959 to 12.67 percent in 1995, the Class II data demonstrate an increased trend. The lowest class, which had more SC employees in 1959 than any of the other classes in 1995, has increased at a slower rate. While these are all positive signs that reservations are working, it's tough to overlook several factors that undermine their effectiveness. First, after more than 50 years, SC representation in Classes I and II continues to fall short of the 15% reserve limit for SCs. While employment in Class III and IV, which are less respected and pay less, are plentiful. Only Class IV satisfied the quota of spots granted to SCs prior to 1970, when quotas were fixed at 12.5%. However, because reservations apply only to current appointments and the typical service career is roughly 30 years, bringing the proportion of posts held to the percentage of jobs reserved is a time-consuming procedure. Since the 1960s, there has been a sharp growth in Class I and II posts, implying that the ratio of new SC recruits is approaching the SC reservation requirements.

3.4. India needs reservation (now)?

Initially, the reservation was solely for SC/ST groups, and it was only for a ten-year term (1951-1961). It has, however, been extended ever since. The Mandal Commission report was implemented in 1990, and the reservation's scope was expanded to cover Other Backward Communities (OBCs). The reservation's benefits were successively enjoyed by only a few groups (or families), excluding others who were actually worthy. The need for reservations has only grown in the 70 years since independence. Things have grown more difficult now that economic reasons for quota have been added to the caste-based ones that already existed.



Unequals should not be treated equally, but is reservation the only solution? Unequals should not be treated similarly, without a doubt. Is the existing system of uneven treatment, however, perfect? Is it causing more inequity? Is it the only way to get out of a welfare state? It's time to reflect.

Reservations based only on economic reasons are not a panacea, while family income might be one of the factors to consider. Also, rather than extending the reservation system indefinitely, it's time to set a time limit for it. It is also a crime and injustice to deny India the service of meritorious candidates who see themselves being overtaken by people with inferior academic proficiency or intelligence.

Are there any other ways to help the marginalised so that everyone has the same opportunities? In other nations, how is affirmative action implemented? Reforms to India's reservation system are urgently needed. Parties are hesitant to disturb the present system since the topic of reserve involves a large number of votes. It's the duty of the government to provide [equality of status and opportunity in India](#). [Indian Constitution](#) allowed reservation only for **socially and educationally backward classes**. However, in India, it became **caste-based reservation** instead of **class-based reservation**

CHAPTER -IV

CRITERIA FOR PROVIDING RESERVATION – AN EQUITABLE ACTION?

4.1. INTRODUCTION:

"Almost every Indian born after Independence thinks about, criticises, uses, or suffers from India's reservation policy at some point in their lives." In this chapter, we look at who benefits from reservations and try to figure out what the criteria should be. Should it be based on caste, stature, or both?

"Today, almost half a billion Indians are entitled for some form of preferential treatment; the figure would be greater if the Supreme Court had not intervened on a regular basis."

The Constitution provides for reservation in educational institutions and public employment in favour of "Scheduled Castes", "Scheduled Tribes" and "socially and educationally backward" class of citizens under Article 15(4) and Article 16(4).⁴³ Articles 341 and 342 empower the President to issue a notified order naming the "castes, races, or tribes to be regarded as Scheduled Castes and Scheduled Tribes" in each state. The Constitution, on the other hand, did not provide any guidelines for identifying the "socially and educationally backward Class" of citizens in Art. 15 (4) or the "Backward Class" of Citizens in Art. 16(4) of the Constitution.

Beneficiaries are Backward Class Citizens, as defined by the Constitution, in addition to Scheduled Castes and Scheduled Tribes. It is necessary to comprehend the concept of "classes." According to Oxford English Dictionary, Class is "A division or order of society according to status; a rank or grade of society; a number of individuals (persons or things) possessing common attributes, and grouped under a general or 'class' name; a kind, sort, division." The makers of the Constitution must have intended to give broad meaning to the term "classes", encompassing all persons with some common characteristics.

4.1.1. Identification of Scheduled Castes

The Scheduled Castes were supposed to represent the 'untouchables,' who were subject to severe limitations because to their inferior ritualistic status. The identification of these groups has undergone many transformations. The most elaborate effort to identify untouchables was made by J.H Hutton, the 1931 Census Commissioner. He proposed a series of tests to identify

⁴³ Article 16(4) uses the term backward class of citizens, in contrast to socially and educational backward Class in Art. 103 15(4).

untouchable communities, which were designed around the incidence of disabilities:⁴⁴

1. "Whether Brahmins can serve the caste or Class in question or not".
2. "Can barbers, water carriers, tailors, and others who serve caste Hindus serve the caste or class in question?"
3. "Whether or not the polluting caste pollutes a high caste Hindu through contact or proximity"
4. "Whether or not the caste or class in question is one from which a caste Hindu can receive water."
5. "Is the caste or class in question barred from using public facilities like roads, ferries, wells, or schools?" "..
6. "Is the caste or social class in question barred from visiting Hindu temples?"
7. "Whether in ordinary social intercourse, a well-educated member of the caste or Class in question will be treated as an equal by high caste men of the same educational qualifications".
8. "Whether the caste or Class in question is merely depressed on account of its own ignorance, illiteracy, or poverty and but for that would be subject to no social disability".
9. "Whether it is depressed on account of the occupation followed, and whether but for that occupation it would be subject to no social disability".

Several of these criteria are difficult to meet. Ambedkar, on the other hand, stated that "the goal was to identify groups that suffer the disdain and hostility of high caste Hindus." He emphasised that "assuming that disparities in untouchability tests reflect differences in untouchables circumstances" is a dangerous mistake. After much discussion, "denial of access to temples and defilement by touch or approach were established as the widely accepted standards of untouchability," and groups in this category were classified in a government schedule in 1936. According to the 1941 census, these groups made up 19% of the Hindu population and 12.6% of the overall population of undivided India. The same method of defining untouchables was used after independence as well."⁴⁵ Clause 2 of the 1950 order provides "for castes, races, or tribes 106 to be designated Scheduled Castes in the boundaries

⁴⁴ Marc Galanter, *Competing Equalities*, Law and The Backward Classes In India 126 (University Of California Press, 105 United States Of America, 1st Edition ,1984)

⁴⁵ THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 1956, available 106 at:https://tribal.nic.in/downloads/CLM/CLM_1/3.pdf (last visited on August 20, 2021)

of states," which are stated in parts 1 to 30 of the order. The rule further states that only people who practise Hinduism or Sikhism are eligible to be classified as Scheduled Castes. In 1950, the Scheduled Caste Order was a restatement of the 1950 list. Subsequent changes to the list included group additions and revisions, but the criterion remained nearly same. Prior to the 1936 edict, it was recognised that depressed classes existed within both Muslim and Christian religions. However, castes or groups from other religions were not included in the order.

4.1.2. Identification of Scheduled Tribes:

This group encompasses all individuals with 'tribal features' (social, cultural, linguistic, and cultural uniqueness) who are geographically and culturally isolated from the mainstream. The formal process for becoming a Scheduled Tribe is the same as for Scheduled Castes. In addition to designating tribal groups in the Schedule, the British practise of isolating particular regions to shield aboriginal people from "exploitative or demoralising interaction with more skilled outsiders" continues even after independence. These areas are specified in the Constitution's fifth and sixth schedules.

4.1.3. Identification Of Other Backward Classes:

"As a collection of all groups that deserved preferential treatment and as castes low in the socio-economic structure, but not as low as the untouchables," the phrase "backward classes" was employed in two senses. The ultimate agreement reached by the Constituent Assembly on the usage of the word "backward" was that "the backward classes other than the SCs and STs would be identified at the local level." According to Marc Galanter, the belief that "the OBC's were a sufficiently potent political force at the local level to look out for their own interests' and, unlike the untouchables, central control of their designation was not required to ensure the inclusion of the deserving" could have been the reason for not releasing a central list of OBCs back then. In 1953, the First Backward Classes Commission was constituted under the chairmanship of Kaka Kalelkar. The purpose of the Commission was to examine "if any portion of the population may be called backward." The Commission presented a list of 2399 groupings, and castes or communities were designated as "backward Class" based on "trade and vocation, job stability, educational achievement, government service representation, and social hierarchy status." The Commission frequently classified a caste based only on its name. The Commission was chastised for using "caste or community" as a standard to measure backwardness. Instead, economic parameters were proposed. The central government strongly opposed the report in parliament, stating that it rejected the "definition of backwardness based on community

grounds." Many state governments established "Backward Classes Commissions," with some focusing on economic factors and others on caste.

A commission was established in 1978, chaired by B. P. Mandal, to: -

1. "Determine the criteria for defining socially and educationally backward sections."
2. "Suggest efforts to be implemented to promote socially and educationally backward classes"
3. "Consider whether it is desirable to make measures for reserving appointments in favour of such disadvantaged persons."

The commission employed 11 social and economic criterion indicators, which were classified into three categories: social, educational, and economic." This was carried out for all Hindu groups. The commission employed a different definition for non-Hindus: all untouchables who converted to other religions and all populations characterised by their traditional vocations, for whose Hindu equivalents were included in the list of backward classes. Based on this, the Commission designated 3,743 caste groupings as backward, accounting for 52% of the population." The panel suggested a 27 percent quota for OBC applicants to ensure that the overall maximum of 50 percent was not exceeded. Article 338B of the 102nd Constitution Amendment Act of 2018 deals with "the structure, duties, and powers of the NCBC," while Article 342A⁴⁶ deals with "the ability of the President to notify a certain caste as SEBC and the right of Parliament to update the list."

According to The Supreme Court Constitution Bench in *Jaishri Laxmanrao Patil VS. The Chief Minister*⁴⁷, "after the insertion of Article 342A in the Constitution, it is the Central government alone that is empowered to identify Socially and Economically Backward Class (SEBC) and include them in a list to be published under Article 342A (1), specifying SEBCs in relation to each State and Union Territory." States may only offer proposals to the President or the Commission under Article 338B, using their existing systems or even statutory bodies,

⁴⁶ "(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with 109 the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be. (2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

⁴⁷ 2021 (3) KLT 465 (SC)

for the addition, exclusion, or change of castes or communities in the list to be published under Article 342A (1)." "The States' right to create reservations in favour of certain groups or castes, the number of reservations, the nature of benefits and the kind of reservations, and all other subjects coming within the purview of Articles 15 and 16 shall, however, remain unaffected."

The federal government has contended that the 102nd amendment to the Constitution, which addresses the constitutional status of the "National Commission for Backward Classes," only pertains to the national list and that states are allowed to create their own lists.⁴⁸ As a result, the "Constitution (One Hundred and Fifth Amendment) Act, 2021" was passed, restoring the jurisdiction of state governments to designate and specify Socially and Economically Backward Classes (SEBCs).

4.2. Economic criteria:

Caste-based reservation opponents believe that it "introduces a sort of identity politics that makes caste visible." They ask how caste sensitive reservations may combat caste sensitivity. Justice Desai held the same view in *KC Vasanth Kumar*. Justice Desai ruled against caste as a primary driver of backwardness in *K.C Vasanth kumar v. State of Karnataka*⁴⁹. According to Justice Desai, "if State patronage for preferential treatment accepts caste as the sole insignia for determining social and educational backwardness, the danger looms large that this approach alone would legitimise and perpetuate a caste system that contradicts secular principles and also violates Art.16(2). Furthermore, caste-based reservation had been seized by the economically well-off segment of the same community." According to Justice Desai, "economic backwardness is the only criterion that can be reasonably devised." "The adoption of economic criteria would translate into reality two constitutional goals: one, to strike at the maintenance of Indian society's caste stratification and take a decisive step toward achieving a casteless society; and two, to progressively eliminate poverty." In *KC Vasanthkumar*, Justice Sen agreed that poverty should be the primary criteria used to assess backwardness under Art.16(4). "The predominant and sole factor for making special provisions under Art.15(4) or for reservation of posts and appointments under Art.16(4) should be poverty," he writes, "and caste or subcaste or a group should be used only for purposes of identification of persons

⁴⁸ "State Can have their own backward classes" available on <https://theprint.in/india/governance/states-can-have-their-111-own-backward-class-lists-102nd-amendment-only-for-centre-govt-says/664523/> (last accessed on May 23, 2022)

⁴⁹ AIR 1985 SC 1495

comparable to Scheduled Castes and Scheduled Tribes."

The problem of caste is not superficial. The problem of caste would not go away even if it was officially forbidden by the constitution. As Arundhati Roy puts it, Caste cannot be eradicated "until we demonstrate the bravery to rearrange the stars in our firmament." Not unless those claiming to be revolutionaries establish a profound criticism of Brahminism. Not unless Brahmins improve their critique of capitalism."⁵⁰

However, reservation can help to break the caste monopoly in specific occupations, particularly in the organised public sector. And we can only overcome the caste problem by acknowledging that caste prejudice exists in our culture. Discrimination based on caste can be eliminated only if we comprehend the negative consequences and adjust our thinking. But, since we are people living in a community, diverse points of view are possible; it is normal to have biases, caste or otherwise, but we should be able to discriminate between good and wrong and suppress our prejudices in accordance with the ideals of our Constitution. The courts have frequently scrutinised the use of economic variables to identify "socially and educationally backward groups."

In *Ashok Kumar Thakur v. Union of India and Others*⁵¹, Justice Raveendran stated that "any provision for reservation is a temporary crutch; such crutch, by needlessly protracted usage, shall not become a permanent encumbrance." For centuries, caste has separated our country. It has stifled its expansion. A casteless society will be the fulfilment of a great aspiration. To begin, the effect of reservation may appear to be perpetuating caste. The immediate impact of caste-based reservation has been disastrous. People in the pre-reservation era desired to be known as advanced rather than backward, whether socially or economically. However, after a reservation, everyone, including those labelled 'progressive,' compete for the 'backward' label in the hopes of reaping the benefits of reservations. When more individuals strive for 'backwardness' rather than 'forwardness,' the country itself stagnates.

Reservation as affirmative action is only needed for a brief time to help the socially and educationally backward strata advance by providing a light supporting push. However, if there is no reassessment after a fair period of time and there is any trend to extend reservations

⁵⁰ Kailash Jeenger, "Reservation Is About Adequate Representation, Not Poverty Eradication" available at <https://126thewire.in/law/supreme-court-bench-reservation>, (last accessed on May 21, 2022)

⁵¹ (2008) 6 SCC 1

indefinitely, the country would permanently become a caste divided society. Instead of being a cohesive community with variety, we will become a broken society that is always distrustful of one another. While positive discrimination is a step toward equality, care must be taken to avoid the road becoming a rut in which the vehicle of progress becomes trapped and stranded. Any reservation provision should not become crutches that cause permanent impairment. They should only be used as a temporary measure to restore normalcy. Though the constitutional objective is a casteless society, the Constitution does not officially mandate or attempt to eradicate caste." *Justice Raveendran's decision clearly identifies all that is currently wrong with our country's reservation system. While recognising the original purpose of the reservation, he expresses concern over its exploitation by our country's political class. The Court recognises the need of reviewing reservation beneficiaries on a regular basis.*

The court ruled in *Indra Sawhney* that the "reservation of 10% of the posts in favour of other economically backward sections of the people who are not covered by any of the existing schemes of reservation made by the Office Memorandum dated September 25, 1991, permissible under article 16" was unconstitutional. "It may not be allowed to exclude a citizen from consideration for appointment to any post under the state purely on the basis of his wealth or property ownership," CJ Kania and Justice Jeevan Reddy said. No such barrier can be erected since state employment is truly intended to serve the people (the fact that it may also be a source of income is secondary). Any such restriction would be incompatible with Article 16's promise of equal opportunity."

According to P.B. Sawant J., "Clause (1) of Article 16 may authorise categorization based on economic criteria." The objective of such classification, however, can only be to reduce poverty or unemployment. If this is the case, no individual or group of people who meet the requirement can be refused its advantages, especially the poor. If the backward classes, as defined in section (4), are excluded from the reservations made on the basis of economic criteria under clause (1), it will amount to discrimination. Furthermore, the goals of reservations under the two provisions differ. The services described in paragraph (1) may belong to classes that are sufficiently or more than adequately represented in the services.

The reservations for them alone under Article 16(1) would effectively negate and contradict the aim of Article 16(4). Even if reservations are preserved for all courses, the seats will be filled exclusively by the most socially and educationally advanced classes. The article's two sentences must be led consistently with each other in order to produce harmonious

consequences. As a result, as long as the socially backward classes and the consequences of their social backwardness persist. "However, in his dissenting ruling, Justice Kuldip Singh pointed out that the term "backward classes of citizens" employed in article 15(4) is not limited to socially and educationally backward groups. The economic criteria is substantially applicable in the context of article 16(4)." "Poverty is the source of all forms of backwardness," he claims. He came to the conclusion that "poor has a direct relationship with social backwardness, and it is an important and prominent feature of poverty."

The Supreme Court stated in Indra Sawhney that "backwardness under Art.16(4) need not be social as well as educational, as is the case under Art.15" (4). Art. 16(4) does not include the qualifying phrases socially and educationally, although Art. 15 does (4). Backwardness as defined in Art.16(4) is primarily social in nature." A "backward class" cannot be established purely on economic grounds. Although it may be recognised based on wealth and employment without regard to caste. Analyzing Justice Jeevan Reddy's decision, it appears to have addressed the ghosts of the NM Thomas decision while remaining committed to the reconceptualisation of Art.16 (4). According to the NM Thomas Case, reservations can even be made under article 16(1) using the notion of categorization. The government, taking cue from the judgement, provided for reservation for the economically weaker, but the court in Indra Sawheny struck down the 10% reservation, stating that while Art.16(1) permits classification on the basis of economic criterion, it would be discriminatory to exclude the backward classes from its purview, because the very purpose of the economic reservation is poverty alleviation. To get over this legal snag, the administration has introduced the 103rd Constitution Amendment Act, which calls for a 10% economic reservation.

4.3. Classes viz-a-viz caste:

"The moral language of caste-based reservations treats it as a method to restore self-respect, dignity, and representation, especially in a societal framework that traumatises the Dalit life on a daily basis through physical attack, violence, stigma, stereotypes, and humiliation."⁵²

At first glance, the constitutional concept of classes appears to be the ethnic, religious, and caste divisions prohibited by Arts. 15, 16, and 29. (2). The aforementioned interpretation stems from the unusual nature of Arts 16(4) and 15(4) in relation to the major provisions. The arguments of the Constituent Assembly support the same interpretation. The amendment

⁵² "Caste-based Reservation Is Compensation For Historical Exploitation And Marginalisation", available at "[https:// 114 www.outlookindia.com/website/story/opinion-caste-based-reservation-is-compensation-for-historical-exploitation-andmarginalisation/355100](https://www.outlookindia.com/website/story/opinion-caste-based-reservation-is-compensation-for-historical-exploitation-andmarginalisation/355100)" (last visited on May 22, 2022)

included Art.15(4) with the express aim of allowing favours for caste groupings. Castes can be used to designate backward classes in two ways:

1. Backward castes or groups as units of classification
2. "A caste's rank, status, or reputation be employed as a measure of backwardness."

The Courts have only succeeded partially in clarifying the distinction "between caste as a unit and caste as a measure of backwardness"

In *Balaji V. State of Mysore*⁵³, the Supreme Court addressed the issue of caste as a unit for the first time. The Supreme Court ruled that:

1. The "bracketing of socially and educationally backward groups with Scheduled castes and Scheduled tribes in Art. 15(4) implied that they were equivalent in terms of backwardness to Scheduled Castes and Tribes."
2. The "idea of backward classes is not relative in the sense that it must contain a class that is backward in respect to the most advanced class in the society." The use of caste or community as a unit was determined to be constitutionally permissible by the Supreme Court. "The backwardness must be both social and educational, not just one or the other."
1. The Court rejected the use of caste as the only criterion for assessing social backwardness, holding that "occupations and site of dwelling are equally significant for evaluating the backwardness of a group of citizens."
2. The Court also decided that "only localities with literacy rates below the state average might be considered educationally backward." "It is for the attainment of social and economic justice that Article 15(4) authorises the making of special provisions for the advancement of the communities there contemplated, even if such provisions may be inconsistent with the fundamental rights guaranteed under Article 15 or 29(2)," the Court observed.

In *Chitrallekha V. State of Mysore*⁵⁴, the Supreme Court justified its ruling in Balaji. "We would hasten to make clear that caste is only a relevant circumstance in ascertaining the backwardness of a class, and there is nothing in Balaji which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so without reference to caste," the Supreme Court said in Chitrallekha. While this Court has not ruled out

⁵³ AIR 1963 SC 649

⁵⁴ AIR 1964 S.C. 1823 at 1833

caste as a factor in determining a group's backwardness, it has not made it one of the compelling conditions. A caste cannot be equated to a class, yet the caste of a person or a group of individuals may be taken into account, together with other relevant considerations, in assigning him to a certain class. It would not be in line with either paragraph (1) of article 15 or clause (2) of article 29 to compel the consideration of castes of individuals to be held in account for defining what are socially and educationally classes," Justice Madholkar wrote in his dissenting opinion.

Article 15 clause (4) contains a non-obstante clause, allowing the authority provided by that clause to be utilised despite the provisions of article 15 clause (1) and article 29 clause (2). However, this does not excuse the intervention of castes in identifying which populations are socially and educationally inferior." Thus, the Chitralakha Majority ruling highlighted that social backwardness can be found based on grounds other than caste, and that such a conclusion will not be void if caste is ignored. "Caste can be a crucial factor in determining social backwardness," says the author, "but it cannot be the single or dominating criteria in that regard."

The objective of the Courts in Balaji and Chitralakha in deciding that caste could not be the main criterion might be to remove well-off persons from the backward castes, as well as the caste system's inapplicability to non-Hindu groups. "If the reservation in question had been based solely on caste and had not taken into account the caste in question's social and educational backwardness, it would be a violation of article 15(1)," the Supreme Court said in *P. Rajendran V. State Of Madras*⁵⁵, "but it must not be forgotten that a caste is also a class of citizens, and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a As a result, the supreme court affirmed "the usage of caste as the units through which Madras' Backward Classes were classified." The Supreme Court observed that "reservations could be made in favour of castes if the caste as a whole is socially and educationally backwards". However, the Court also pointed out that, in such cases, "it does not mean that caste was the sole consideration in finding these groups backward".

In *State of Andhra Pradesh V. Sagar*⁵⁶, the Supreme Court added to the discussion of caste as a unit and caste ranking as a measure of backwardness by defining "Class." The Supreme Court defined "class" as "a homogenous group of persons who are recognisable by certain common

⁵⁵ AIR. 1968 SC 1012 at 1014

⁵⁶ AIR 1968 S.C. 1379 at 1382.

features such as position, rank, occupation, domicile in a locality, race, religion, and the like and who are grouped together because of some likenesses or common traits." Caste cannot be completely eliminated when deciding whether a segment constitutes a class.

A test exclusively based on caste or community cannot be acceptable in the selection of a class." As a result, in the case of Sagar, the Supreme Court marginally shifted its position from Balaji and Chitrlekha, declaring that while caste cannot be disregarded for assessing class, class cannot be decided primarily on the basis of caste. The Supreme Court maintained in *Triloki Nath Tiku V. State of Jammu and Kashmir*⁵⁷ that "backward classes" were not the same as castes or communities. Members of a caste or community may be classified as a class not just because they belong to that caste or group, but also because of their social, educational, and economic disadvantages." In *Triloki Nath*, the Supreme Court also stated that classifying people purely on the basis of their "caste, community, race, religion, sex, descent, place of birth, or domicile" would be a clear violation of the constitution.

In *Janki Prasad Parimoo v. State of Jammu and Kashmir*⁵⁸, the Court ruled that "economic concerns should not take precedence over elements that reveal whether a specific class is socially and educationally disadvantaged." In this case, the Supreme Court looked at "groups chosen based on domicile, current occupation, grandfather's occupation, caste, and other criteria." The Supreme Court's ruling in *Janaki Prasad Parimoo* is significant because it is one of the cases in which the societal importance of reservation as a mechanism to redress cumulative disadvantages rather than a poverty relieving measure can be seen. "It may not be irrelevant to consider the caste group of citizens claiming to be socially and educationally backward," the Court observed in *Kumari K.S. Jayashree V. State of Kerala*⁵⁹, in response to the question of "whether caste can by itself be a basis for determining social and educational backwardness." Occupations and residence may also be important determinants in deciding who is socially and educationally disadvantaged." Although caste may be significant in distinguishing socially and educationally disadvantaged classes, the Supreme Court has maintained its long-held position that other considerations must also be considered.

In *State of Karnataka v. K.C Vasanth Kumar*⁶⁰ "Any examination of the caste system, class

⁵⁷ AIR 1969 SC 1 at 3

⁵⁸ AIR 1973 SC 930

⁵⁹ 1977 (1) S.C.R. 194.

⁶⁰ AIR 1985 SC 1495

or superficial, would at immediately demonstrate the solid linkages which the caste system has with economic power," Chinnappa Reddy, J., stated. In Indian rural culture, social status and economic power are so entwined and fused in the caste system that, if poverty is the reason, caste is the primary gauge of social backwardness, and social backwardness is frequently easily recognizable with reference to a person's caste."

The majority in *Indra Sawhney V. Union of India*⁶¹ concluded that "a caste might be, and frequently is, a social class in India, and if it is backward socially, it would be a backward class for the purposes of article 16." (4). Non-Hindus, Muslims, Christians, and Sikhs are divided into groups, and if they are socially disadvantaged, they are entitled to reservation under Art. 16(4)."



⁶¹ AIR 1993 SC 477

CHAPTER -V

SUGGESTIONS AND RECOMMENDATIONS

5.1. INTRODUCTION:

In India, reservation refers to the practice of reserving seats in government employment, educational institutions, and even legislatures for specific groups of people.

The reservation, which is also known as affirmative action, can be viewed as positive discrimination. Reservation is a government policy in India that is recognized by the Indian Constitution (by means of various amendments)

Reservation was incorporated in the Constitution to allow the so-called disadvantaged classes to equalize with the so-called privileged. The Indian Constitution permits this type of positive discrimination in order to achieve social equality of opportunity and position. Reservation was never supposed to be a passing fad for the founding fathers. Reservations for the poor were supposed to be continued until they were socially and economically stable. Reservations were put into the system to assist the poorer classes in gaining a better path and sharing in the benefits of a free and independent nation.

In the case of *Balaji v. State of Mysore*⁶², the court ruled that "a person's caste cannot be the sole criterion for determining whether a caste is backward or not." Poverty, employment, and location of residence may all be crucial considerations to consider. The court went on to say that just because a caste is regarded backward at one time does not indicate it would remain such at all subsequent periods. The government should reassess the test and, if a class has progressed to the point where reservations are no longer necessary, that class should be removed off the list of backward courses.'

5.2. Reservation v/s merit:

Equality is "visualised as equivalent possibilities to compete for the existing values among those differentially endowed, independent of structural drivers of success or of the repercussions for the distribution of values," according to Formal Equality. Differences in IQ and previous training are regarded unimportant for distributional decisions under formal equality. It insists on an unified competitive criteria for selection. For the sake of resource distribution, substantive equality, on the other hand, takes into account variations in IQ, etc.

⁶² AIR 1963 SC 649

Any civilised country should strive for a perfect balance of substantive and formal equality. The supreme court in *Balaji V. State of Mysore*⁶³ favoured the merit concept. "The demand for professionals, technical, scientific, and academic personnel was so urgent that it would create significant damage to national interest if merit factors were fully removed by wholesale reserving seats in all professional, technical, medical, or engineering universities," the Court said.

"If equality of opportunity for every individual in the country is the constitutional promise, a candidate who receives higher marks than another is entitled to priority in admission," Justice V.R. Krishna Iyer put it plainly. When picking the best according to the rule of equal opportunity for equal marks, merit must be the criterion. To undervalue merit at the pinnacle is to fall behind the progress of the country in vital areas of professional knowledge."⁶⁴

*In State of Kerala V. N.M Thomas*⁶⁵, Justice Krishna Iyer recognised that "efficiency and national interest will suffer if Scheduled Castes and Scheduled Tribes are selected through reserved quota for higher posts"

Hon 'able Justice A.P Sen also noted the difficulty in "deviating from merit principle" while making selection for higher level profession and services: "Professional expertise, born of knowledge and experience, of a high degree of technical knowledge and operational skill is required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or States, there can be no room for reservation of posts; merit must be the single and decisive criteria for appointments."⁶⁶

The Supreme Court ruled in *Indira Sawhney v. Union of India*⁶⁷ that "reservations in upper echelon appointments shall be excluded." While on the subject of Article 335, we believe that there are specific services and positions for which merit alone matters, either because of the nature of the obligations associated with them or because of the level (in the hierarchy) at which

⁶³ *Id.* at 61

⁶⁴ Jagdish Saran V. Union of India, (1980) 2 SCC 768

⁶⁵ (1976) 2 SCC 310, 527

⁶⁶ Parmanand Singh, Tension Between Equality and Affirmative Action: An Overview, 1 J. Jindal Global Law Review 79 10

⁶⁷ *Supra* note at 26

they are attained. In such circumstances, it may not be advisable to provide for reservations.

For example, technical positions in research and development organizations/departments/institutions, specialties and super-specialties in medicine, engineering, and other physical sciences and mathematics courses, as well as positions in the defence services and establishments related to them. Reservation would not be appropriate for jobs at the highest echelons, such as Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space applications. Reservations in these types of work are viewed as incompatible with the efficiency principles required of professions and services."

The Supreme Court of India held in *Preeti Sreevastava V. State of Madhya Pradesh*⁶⁸ that "there could not be any reservations at the level of super specialties in medicine since any dilution of merit would be detrimental to national interest." At the postgraduate level in medical specialties and super-specialties, there is an element of public interest in having the most distinguished pupils."

5.3. Need for reservation:

There are various reasons why reservations were established and included into constitutional provisions. These are some of the reasons:

- Reservation is one of the measures used to counteract social inequality and prejudice against historically oppressed communities.
- Reservation, often known as affirmative action, helps to boost up underprivileged populations.
- To make amends for historical injustices suffered by the country's lower castes and to level the playing field for the underprivileged, who have been unable to compete with those who have had access to wealth and means for centuries, all people must be raised to the same level before being judged on merit.

Over the years, there has been much criticism of India's reservation system and whether it is genuinely serving its goal. It has been said multiple times that reservations were formed to guarantee that historically disadvantaged groups had equitable access to resources, yet they remain socially disadvantaged despite economic growth.

⁶⁸ (1999) 7 SCC 120

It has also been argued that because many higher caste impoverished people endure prejudice and injustice, reservation has become a vehicle of exclusion rather than inclusion, increasing societal frustration.

Reservations, as a kind of affirmative action, were meant to be a mechanism for promoting substantive equality in addition to nominal equality. However, reservations have frequently been used as a magic wand by governments to pacify groups of voters in exchange for their votes, particularly in India. The "Constitution One Hundred and Third Amendment Act providing for a ten percent quota" for economically disadvantaged citizens appears to be a gimmick implemented for objectives other than the upliftment of the impoverished. Beyond the fundamental purpose of reservations, the execution of the ten percent quota would be a tremendous challenge for the government, as the yearly family income ceiling has been raised to eight lakhs. It is profoundly regrettable that the Parliament has failed to grasp the significance of previous Supreme Court decisions that limit reservations to 50% and have underlined those reservations are not a poverty alleviation mechanism. In *Youth for Equality v. Union of India* (WP (C) 73/2019), the Supreme Court will examine the constitutionality of the amendment act, and laymen and constitutional scholars around the world are eager to learn whether the amendments will pass judicial muster, especially since the Supreme Court has been reluctant to strike down constitutional amendments.

The Indian Constitution has heard the cry of the oppressed classes and provided laws to reduce the disparities in our society. The concept of reservations in the Indian Constitution is an attempt to reduce the disparities that people have experienced and continue to experience in our society. Reservations were envisioned as an exceptional measure to be used exclusively on a small number of seats. However, reserve evolved into its aim through time, frequently showing shades of anti-poverty programmes. It is past time to control reservations in our nation and limit their percentage to cases involving systematic and historical injustices.

The concept of reservation acknowledges the initial social and educational disadvantages that affect a specific category of people and cause them to occupy a disadvantageous position in society, and it departs from the standard procedure of meritocratic selection as demanded by formal equality in order to ensure substantive equality.

Justice Raveendran's decision in **Ashok Kumar Thakur v. Union of India and Ors**⁶⁹ clearly identifies all that is currently wrong with our country's reservation system. While recognising the original purpose of the reserve, he expresses concern over its exploitation by our country's political class. The Court recognises the need of reviewing reservation beneficiaries on a regular basis.

5.4. Opinion and views:

1. Although reservations as a concept promote substantive equality, they can have negative consequences for society if they are maintained indefinitely. The government must gather statistics on the representation of the backward classes in public employment on a regular basis and modify the level of reservations. The government must review the beneficiaries of reservations on a regular basis based on the criterion of "adequate representation." When determining the amount of reservations, the government must keep in mind that the goal is appropriate representation, not proportional representation, and should never exceed fifty percent. The delicate balance between substantive and formal equality would be upset if reservations exceeded fifty percent.
2. Every civilised country in the world follows the merit principle when it comes to admission to educational institutions and public jobs. Only in extreme instances could the merit principle be deviated from. Inequalities that exist in a society as a result of systemic and historical discrimination constitute an unusual condition under which divergence from the merit principle might be accepted. Reservations, as a deviation from the merit principle, should be utilised only in extreme situations, for a minority of seats, and the beneficiaries should be a class of citizens who would otherwise be unable to pursue a life of substantive equality. Thus, the government must make sure that reservations are granted only in exceptional circumstances and that too only for a minority of seats.
3. To lessen reliance on reservations, the government must actively embrace alternative affirmative action measures such as scholarships, grants, health benefits, anti-poverty programmes, employment guarantee programmes, and so on. More programmes like the National Rural Work Guarantee Program have played a critical role in ensuring

⁶⁹ AIR

employment for a significant number of people, and more of these types of programmes would go a long way toward relieving poverty.

Our country's caste system has long been a source of contention. If we are to bid farewell to the system of reservations forever the government must take proactive steps to create a casteless society. "I do not believe that we can construct a free society in India so long as there is a trace of this ill-treatment and subjugation of one class by another," B.R Ambedkar writes in Annihilation of Caste. "The government aims eventually at removing all these appellations, descriptions, and labels which ideologically and physically segregate the people as the Depressed Classes, the Harijans, the Scheduled Castes, the Scheduled Tribes, and so on," declared Jawaharlal Nehru in one of his lectures. Unfortunately, the administration has made no significant efforts on this front since independence.

If poverty alleviation is judged to be the goal of economic reservation, the government should take more precise measures rather than depending on yearly family income or land holdings as qualifying requirements. Rather than imposing blanket criteria, the government might establish particular conditions for reservations in educational institutions and in government jobs.

Reservation policies can be fair and successful if they are used as affirmative action for the benefit of those who are educationally, socially, and economically disadvantaged. To achieve the goal of the reservation policy, assistance should be provided to the majority of the population, which is deemed to be a disadvantaged segment of society. People from classes that are reasonably advanced in terms of education, finances, and social standing should not be eligible for the reservation. Excluding the relatively advanced element of the quota, namely the creamy layer, from all castes, tribal groups, and other reservation beneficiaries can help make the reservation programme more effective.

“Reservations should not be given to successive generations indefinitely. So that those who truly deserve affirmative action and sufficient representation can benefit from the rewards of the reservation.”

At this moment, India's reservation policy has to be revised in order for the benefit to reach the marginalised sectors of the disadvantaged classes. However, when we revise the reserve policy, we must guarantee that the benefits of the reservation reach the socially, economically, and educationally disadvantaged. To establish the society's backward classes, a combination of

social, educational, and economic factors should be used.

In addition, equal weight should be given to the abolition of the caste system, untouchability practises, and other forms of discrimination in our society. So that societal equality may be achieved. "As a result, reservation and equality are two sides of the same coin, and if equality is the goal, reservation is not the only means to achieve it. Rather it is only one of the ways to achieve it.

5.5. SUGGESTIONS:

If reservation advantages are granted, they should be limited to a maximum of two children per family, regardless of the number of children in the family, since this would serve to regulate the population of OBCs, resulting in a drop in their representation and giving way to the concept of equality. This might also be accomplished if the reserve is only for one generation. A family that has previously benefited from it should be permitted to do so again in the following generation only if their social, economical, and cultural circumstances have not improved to a satisfactory level despite access to education and other support services.

However, rather than being subjective in achieving the desired social standing, there is a need for ongoing monitoring to determine if a particular family or sect has improved as a result of reservation, necessitating the government's strict implementation of its programmes. This would allow reservations to be phased out in a gradual manner.⁷⁰

For example, after an OBC has achieved self-sufficiency, he should be relegated to the general group. Following that, his subsequent generations will be classified as a generic category. As a result, the number of OBCs will be reduced.

The crux of the problem is not the categorization of the groups, but the growing rural-urban split and migration concerns. A general category citizen in a rural community in India is suffering in the same way as the backward classes. As a result, the solution consists in bridging the gap between rural and urban India, which may be accomplished by focusing on the rural setting and giving all of the necessary amenities. We may limit the concentration of power in a few hands and offer support to the weaker sections of society, such as rural society, in this

⁷⁰ *Reservation- Solution to the Problem*, available at: http://www.legalserviceindia.com/articles/res_pro.htm.

way.

The constitution's framers aspired to create a casteless and classless society. They tried to uplift the disadvantaged and provide them with a decent living by focusing on their work, education, and social position. In a word, the core of the reserve notion was rooted in Equity and Justice. However, with time, the entire system became unstable. As a result of evaluating different aspects of the government's reserve policy covered under Articles 15 and 16, certain flaws in reservation policies have been identified. The authors' humble proposals for eliminating such shortcomings and achieving the desired aims of reservation policy are as follows:

- For the precise determination and categorization of creamy layer, a scrutinising method is necessary. Furthermore, the idea of creamy layer should be extended to the top class of Scheduled Castes and Scheduled Tribes. It is also recommended that the creamy layer system be thoroughly inspected with all necessary diligence.
- To resolve the ambiguity of the word "backward class," as indicated in Articles 15 and 16, a constitutional change is necessary. Several times, these terms produce confusion since women, children, and those living below the poverty level are too often labelled as backward and weak. As a result, an adjustment for clarification is expected to remove this issue.
- In opposition to the provision under Article 320, it is frequently claimed that the ruling political parties and administration sought to keep the reservations in place only for the purpose of counting their vote banks. As a result, it is proposed that now is the time to eliminate such reservations by constitutional modification and prevent Indian politics from being polluted.
- Although the Government has implemented the 10% quota for Economically Weaker Section in unreserved category in haste, it is high time that the Government revises policies relating poverty line determination and guarantee that all poor and needy people fall within such purview.
- Above all, the authors argue that it is past time to focus on the fundamental difficulty confronting the Reservation Laws, which is nothing more than a poor method of implementation or execution of the laws or policies being developed. The real recipient lacks information, which is a major problem at the moment.

If practically situations would be considered and analysed at ground level then we will come across the real time use of conditions and utilization of reservation policies. It has been clearly

seen that use of reservation policy is restricted and limited to few hands only and those are that person who are grown up well in terms of education, social backwardness, and financially also. It is no more a hidden fact in fact it is very much manifest to each and every individual and person present out here in the country that more than being properly and justifiably utilising the policy it is being abused and arbitrarily, unreasonably has been misused by few hands or particularly by certain groups. That so-called reserved class who are actually educationally, socially, financially backward are still backward because of the thing that there becomes an unreasonable classification in the reserved classes itself.

CONCLUSION

If you look at the situation objectively, you'll see that the goal behind reservations isn't flawed at all; it's the connotation and implementation of it that has proven ineffectual. The way reservation has been administered over the years has exacerbated and reinforced caste divisions in society, marginalised the poor and needy, and benefitted primarily the upper echelon of the so-called Backward classes. The benefits of reserve have failed to reach the poorest members of society. Furthermore, it has extinguished the spirit of brotherhood and healthy rivalry, as well as the drive to advance and work hard. Reservations based on a restricted definition of caste are therefore fundamentally incorrect and have therefore proven to be a failure. As a result, it is necessary to reflect, putting aside the need for political mileage and considering honestly where things have gone wrong.

Nobody appears to care about the plight of the underdog, but everyone wants a piece of the enormous political pie for the next elections. Reservations should not be abandoned since everyone wants society to progress as a whole and for everyone to benefit from that development. But, rather than being based on caste to fulfil the political objectives of our power-hungry politicians, reservations should be based on more acceptable parameters that benefit all sections of society.

It may, for example, be based on economic standing or anything else that is actually beneficial to our community and state. In this aspect, we should learn from the United States. It is the most market-oriented country, with an affirmative action programme. In terms of entrance and employment, institutions and the government in the United States favour Black and Hispanic candidates. Despite this, the US economy is still one of the most competitive in the world. The

key is to use incentives rather than quota-based constraints to implement affirmative action.

ISSUES:

- 1) Indian society is divided along the lines of caste, religion, and gender.
- 2) Well-qualified applicants are barred from significant administrative positions.
- 3) In the guise of reservation policy, there is a lot of corruption.
- 4) India's reservation policy will never be abolished.
- 5) In India, reservations are usually based on caste and religion.
- 6) There is no information available to indicate who benefits from reservations.
- 7) Families who grow wealthy receive reserve benefits as well.
- 8) Many times, truly needy persons are unaware of their claim to reservation benefits.
- 9) Reservation payments are distributed to the appropriate recipients through the mediator; nevertheless, the mediators are abusing the government's plan, which is not the best manner.
- 10) The reservation policy is not being observed properly.
- 11) Reservations are made from regular seats, not from seats created specifically for those from socially and educationally disadvantaged groups.

These findings are important for understanding Reservation and proposing changes because they allow us to identify and work with areas that have been resistant to change. This is not to say that this analysis is the solution to Reservation's problems, but rather that it provides a starting point for considering changing certain elements. Furthermore, because this analysis takes into account historical and institutional perspectives, these findings have a long-term scope, allowing us to find and work with more patterns; extensions, lack of evaluation, resistance, and so on.

Answers:

- 1) A yearly review of the reservation policy is required.
- 2) Instead of interfering with general seats, the government should create a specific and separate post for the weaker members of society.
- 3) Reservations should be based on the family's total wage, which includes both the husband and wife's salaries as well as any additional sources of income.
- 4) First and foremost, the government must maintain a database that identifies who is receiving reservation benefits. Such a database should be open to the whole population.

- 5) The backlog provision must be removed, and the remaining openings must be filled by eligible individuals within one year.
- 6) Reservations must not be made on the basis of caste. It must be based on economic, social, and physical limitations.
- 7) Only a restricted number of children in a household will be eligible for reservation advantages.
- 8) The reservation should not be for the sake of advertising, but rather as a one-time assistance.
- 9) The creamy layer idea should also be used in the SC/ST categories.
- 10) Prior to granting the reserve to the poorer members of society, some economic assistance must be provided.

Nothing has changed in the last 60 years, demonstrating that we have misplaced our energy. We have completely failed to bring the underprivileged into parity with the rest of society. Rather, it appears that the reservation policy is attempting to redress the wrongs done to the underprivileged through the years. We have permanently paralysed a segment of society and stifled their upward mobility by suffocating their will to work hard and be rewarded. *Who will want to work hard if one gets an opportunity and other incentives without burning the midnight oil? Instead of encouraging this kind of lethargy, the policy should be formulated in such a way as to harness the real cream of every section of the society regardless of their caste or community for the betterment of the society*

We must identify those who are truly in need, oppressed, and disadvantaged. Then we must provide appropriate incentives, such as education, opportunities, and financial support. Then, rather than mindlessly promising anybody a safe future based on caste, even if he or she is the least worthy, genuine ability and hard effort should be recognised and rewarded. Merit should be the criterion because the country needs the best of its people to flourish, not those who are reaping unjustified and undeserved privileges simply because they belong to a sector of society that has been fortunately designated as underdeveloped in the Constitution. It's so disheartening to see a well-deserving candidate with a bright future lose out to a less deserving candidate simply because he comes from a minority group—fortunately or unfortunately. Why should a deserving man suffer simply because he is a member of society's so-called favoured class—unfortunately or simply because of the state's flawed policy?

Reservation at the time of independence was meant to achieve the ultimate goal of development. But now it has resulted in further fragmentation and division of the society on

caste lines which was never the objective with which special provisions for upliftment had been incorporated.

Based on the preceding discussion, this research question is an important first step toward understanding Reservation and, as a result, effecting change. My analytical approach, however, has some drawbacks. This dissertation did not examine policy implementation on the ground because it focused on agenda setting and policy formulation. As a result, while the findings point to policy issues, they cannot comment on practical implementation or the impact on the public. As a result, it is difficult to make claims about how the Commissions and public administration could better engage with the public or apply policy in practise. But then even I will highly recommend and suggest to consider the opinions to make changes in the “expired old regime”, moreover, I may humbly please to request its very high time that

It needs a coordination, support, positive attitude of all at large

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